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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

NORBERTO MORENO,

Plaintiff(s),

v.

SOUTHERN WINE GROUP, LLC,
an Oregon company, and
CHRISTOPHER KIRK ERMISCH,
a person.

Defendant(s),

No. 3:11-cv-6227-TC

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES**

Defendants SOUTHERN WINE GROUP, LLC, and CHRISTOPHER
KIRK ERMISCH hereby respond to Plaintiff's Complaint as follows:

ANSWER

1. No response is required to the allegations of paragraph 1.
2. Defendants admit the first sentence of paragraph 2. Defendants deny the remainder of the allegations of paragraph 2.
3. Admit.

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3 4. Admit

4 5. Defendants deny paragraph 5.

5 6. Defendants respond to the allegations of paragraph 6 as follows:

6 As to the first sentence of paragraph 6, Defendants admit
7 the first sentence except to allege that the first meeting with Plaintiff
8 occurred around August 2000.

9
10 As to the second sentence of paragraph 6, Defendants admit
11 the second sentence.

12 As to the third sentence of paragraph 6, Defendants deny
13 that Torrontes was made by Moreno. The original blend of Torrontes was
14 made in La Riojana's lab by Ermisch and Ross Whiteford, an Australian
15 consultant to Cooperativa La Riojana. While Plaintiff was present as an
16 observer, Ermisch made the winemaking decisions and kept the wine
17 tasting notes.

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19 7. Defendants respond to the allegations of paragraph 7 as follows:

20 Defendants are without knowledge or information to
21 support a belief as to the truth or veracity of the first sentence of
22 paragraph 7, and therefore denies the same.

23 Defendants are without knowledge or information to
24 support a belief as to the truth or veracity of the second sentence of
25 paragraph 7, and therefore denies the same.

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27 Defendants admit that the phrase in the third sentence of
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3 paragraph 7 is one interpretation of the term “La Yunta”.

4 Defendants are without knowledge or information to
5 support a belief as to the truth or veracity of the fourth sentence of
6 paragraph 7, and therefore denies the same, except to state that Plaintiff
7 did not at any time own any wineries having a wine labeled La Yunta.

8 Defendants deny the remainder of paragraph 7.

9
10 8. Defendants deny paragraph 8, except to state as follows:

11 While Moreno contacted the designer first for label work,
12 the brand idea was developed completely by Ermisch. Ermisch and his
13 wife’s girlfriend came up with use of Guanacos (like llamas) for the label.
14 Ermisch suggested water color image, and sat next to the designer and
15 told the designer exactly what to do. Ermisch determined look and
16 orientation of Guanacos, and added mountains behind brand image.
17 Ermisch determined label size. Moreno’s statements to the contrary are
18 complete falsehoods. Based on an email from May, 2003, it appears that
19 the designer wasn’t even paid until Ermisch sent Moreno money to do so.
20 Ermisch still has all the original label idea proofs. Moreno does not,
21 because he was not the label creator.

22
23 9. Defendants deny paragraph 9, except to state as follows:

24 Ermisch worked via email to complete artwork image.
25 Ermisch wrote back label copy and wrote legal mandatory text. Ermisch
26 approved the label at the BATF. Labels were printed in Mendoza,
27
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3 Argentina.

4 10. Defendants admit paragraph 10, with the qualification that the
5 first shipment may have been in Fall 2001

6 11. Defendants admit that Plaintiff fraudulently registered
7 Defendants' mark La Yunta in Argentina without Defendant's knowledge, and
8 that upon being confronted, admitted he had done it for convenience and would
9 properly make correction to put Defendants name on the registration.
10 Defendants deny the remainder of paragraph 11.
11

12 12. Defendants deny paragraph 12 except to state as follows:

13 Plaintiff never shipped his own wine. Plaintiff did not own
14 a winery. Defendants received wine from Argentinean wineries FOB
15 Mendoza Argentina, and shipped them to the United States.
16 Defendants' believe the first shipment may have been February 2002 or
17 earlier.
18

19 13. Defendants admit that in approximately 2005 Ermisch suggested
20 importing from Argentina bulk unbottled wine for fractioning or bottling.
21 Defendants deny the remainder of the allegations of paragraph 13.

22 14. Defendants deny the allegations of paragraph 14, except to state
23 as follows:

24 Defendants were forced to switch wineries from Elias Hijos
25 due to the quality of the Torrontes, but Plaintiff did not want to return to
26 La Riojana because he had several personal issues with the staff there,
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3 and La Riojana didn't like dealing with Plaintiff because of his difficult
4 personality.

5 15. Admit

6 16. Defendants deny that Ermisch offered Plaintiff \$12,000 for U.S.
7 brands or trademarks. At no time has Plaintiff ever had US brand or
8 trademark rights. Defendants learned that Moreno had filed an Argentinian La
9 Yunta registration without Defendants knowledge, and that when confronted,
10 Plaintiff stated he would properly add Defendants name to the registration.
11 Plaintiff however failed to do so. Defendants tried to buy Moreno's fraudulently
12 obtained brand rights as the registration was preventing Defendants from
13 exporting bottled label product to other countries, and was preventing
14 Defendants from selling LA YUNTA in Argentina. Moreno verbally agreed in a
15 personal face to face meeting with Defendants' Argentine attorney present but
16 then at the last minute changed his mind.
17

18 17. Admit

19 18. Defendants reallege their responses to paragraphs 1-17

20 19. Admit.

21 20. Admit.

22 21. Denied.

23 22. Denied.

24 23. Denied.

25 24. Denied.

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25. Denied.

26. Defendants contend that paragraph 26 calls for a legal conclusion to which no response is required.

27. Denied.

28. Denied.

29. Defendants reallege their responses to paragraphs 1-28

30. Denied.

31. Denied.

32. Denied

33. Defendants reallege their responses to paragraphs 1-32

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Defendants reallege their responses to paragraphs 1-38

40. Denied.

41. Denied.

42. Denied.

43. Denied

44. Denied.

45. Defendants reallege their responses to paragraphs 1-44.

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3 46. Defendants admit that an Argentinean contract, the Wine
4 Commercialization Agreement, existed between Ermisch and Moreno, which
5 was being performed in Argentina, with Moreno's knowledge, by Southern
6 Wine Group. Defendants deny the remainder of paragraph 46.

7 47. Denied.

8 48. Denied.

9 49. Denied.

10 50. Defendants reallege their responses to paragraphs 1-49

11 51. Defendants admit that the Argentinean Wine Commercialization
12 Agreement, valid and controlled by Argentinean law and jurisdiction existed
13 between Defendants and Plaintiff.
14

15 52. Denied.

16 53. Denied.

17 54. Denied.

18 55. Denied.

19 56. Denied.

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21 Defendants deny the WHEREFORE paragraph and sub clauses in their
22 entirety.

23 AFFIRMATIVE DEFENSES

24 1. Argentinean law controls all disputes related to the Argentinean
25 Wine Commercialization Agreement between the parties.
26

27 2. Plaintiff's complaint is barred by the relevant statutes of
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3 limitations.

4 3. Plaintiff's complaint fails to state a claim upon which relief may be
5 based.

6 4. Plaintiff's complaint fails to allege sufficient facts to pleading a
7 cause of action.

8 5. Plaintiff's complaint is barred by improper venue.

9 6. Plaintiff's complaint is barred by laches.

10 7. Plaintiff's complaint is barred by waiver.

11 8. Plaintiff's complaint should be dismissed because the parties
12 bindingly chose Argentina as the exclusive law and forum for all disputes
13 related to any agreement between them
14

15 9. Plaintiff materially and fatally breached the agreement between
16 the parties, excusing any subsequent breach by Defendants.
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18 10. Plaintiff's claims for damages should be set off by the damages
19 suffered by Defendants for Plaintiff's prior material breaches.

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WHEREFORE, Defendants pray as follows:

1. That Plaintiff's complaint be dismissed with prejudice;
2. That Plaintiff be ordered to pay Defendants' reasonable attorneys fees and costs; and
3. For such other and further relief as justice and equity provides.

DATED This August 15, 2011 /s/ Kurt M. Rylander
KURT M. RYLANDER, OSB 94427

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Of Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date signed below I electronically filed the document to which this certificate is attached with the clerk of the court using the CM/ECF system, which will send email notification of such filing to Attorneys for Plaintiff:

John M. Kreutzer at jkreutzer@smithfreed.com.

DATED This August 15, 2011 /s/ Kurt M. Rylander
Kurt M. Rylander
Rylander & Associates PC
Of Attorneys for Defendants,